

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PATRICK DANIEL, #465128,

Petitioner,

v.

CASE NO. 07-CV-12273

BARRY DAVIS,

Respondent.

/

**ORDER DENYING PETITIONER'S APPLICATION
TO PROCEED IN FORMA PAUPERIS ON APPEAL**

Michigan prisoner Patrick Daniel ("Petitioner") filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his 2003 state court convictions for two counts of first-degree murder, Mich. Comp. Laws § 750.316(1)(a), and one count of mutilation of a human body, Mich. Comp. Laws § 750.160, for which he was sentenced to concurrent terms of life imprisonment without the possibility of parole and three to ten years imprisonment, respectively. On March 29, 2010, the court denied the petition and declined to issue a certificate of appealability. (See 3/29/2010 Order, Dkt. # 18.) On January 3, 2011, the United States Court of Appeals for the Sixth Circuit denied his application for a certificate of appealability. Petitioner thereafter filed post-judgment motions for relief from judgment, to recuse the district court, to stay proceedings, and to transfer consideration of filings, which this court denied on December 19, 2011. (See 12/19/2011 Orders, Dkt. ## 30, 31.)

This matter is before the court on Petitioner's application to proceed *in forma pauperis* on appeal regarding the denial of his post-judgment motions. The standard for

granting an application for leave to proceed *in forma pauperis* is a lower standard than the standard for granting a certificate of appealability. See *Foster v. Ludwick*, 208 F. Supp. 2d 750, 764 (E.D. Mich. 2002). Whereas a certificate of appealability may only be granted if petitioner makes a substantial showing of the denial of a constitutional right, a court may grant leave to proceed *in forma pauperis* if it finds that an appeal is being taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a); *Foster*, 208 F. Supp. 2d at 764-65. “Good faith” requires a showing that the issues raised are not frivolous; it does not require a showing of probable success on the merits. *Foster*, 208 F. Supp. 2d at 765. Having considered the matter, the court concludes that any appeal regarding the denial of Petitioner’s post-judgment motions would be frivolous and cannot be taken in good faith. Accordingly,

IT IS ORDERED that Petitioner’s application to proceed *in forma pauperis* on appeal [Dkt. # 33] is DENIED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: January 27, 2012

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, January 27, 2012, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522